Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services	)	CC Docket No. 95-20
	)	
1998 Biennial Regulatory Review -- Review of *Computer III* and ONA Safeguards and Requirements	)	CC Docket No. 98-10

REPLY COMMENTS OF BELL ATLANTIC ON FURTHER NOTICE

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April 23, 1998

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REPLY COMMENTS OF BELL ATLANTIC[1]
ON FURTHER NOTICE

I. Introduction and Summary

Several parties are again trying to keep the public from enjoying the fruits of competition by forcing the Bell companies to provide intraLATA information services through a separate subsidiary. Their arguments ignore history to further their anticompetitive goals. During the decade in which the Bell companies have provided unseparated information services, the nationwide market for these services has grown faster than nearly any other sector of the U.S. economy. In this entire ten year period, there has not been one Commission finding that entry by any Bell company has harmed any competitor.

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[1] The Bell Atlantic telephone companies ("Bell Atlantic") are Bell Atlantic-Delaware, Inc.; Bell Atlantic-Maryland, Inc.; Bell Atlantic-New Jersey, Inc.; Bell Atlantic-Pennsylvania, Inc.; Bell Atlantic-Virginia, Inc.; Bell Atlantic-Washington, D.C., Inc.; Bell Atlantic-West Virginia, Inc.; New York Telephone Company; and New England Telephone and Telegraph Company.

In the face of the same purely theoretical arguments that these same parties have made since 1986 that the unbroken record shows are unfounded, the Commission can come to but one conclusion. It must retain structural integration of Bell company information and telecommunications services and reduce the existing regulatory burdens on provision of such services. Only in this way will the public enjoy the full benefits of the unfettered marketplace competition that some parties want constrained.

II. Parties Advocating a Return to Structural Separation Ignore the Record and the Law.

As they have each time the Commission has looked at this issue over the past dozen years, certain parties continue to argue that the Commission should return to the pre-1986 days of structural separation.[2] These parties are again trying to enlist the Commission's aid to limit competition. They base their anticompetitive demands on several invalid arguments.

First, MCI erroneously claims that the Court of Appeals decision which resulted in the instant remand required the Commission to return to structural separation for Bell company provision of information services. MCI at 11-22, citing *California v. FCC*, 39 F.3d 919 (9th Cir. 1994) ("*California III*"). That is simply wrong. As the Commission correctly found, the holding in *California III* was very narrow. It was limited to a finding that the Commission had not justified its apparent "retreat" from "fundamental unbundling" as one of the conditions of structural relief. *Further Notice of*

[2] Structural relief for the Bell companies' provision of information services was approved in 1986. *Amendment of Section 64.702 of the Commission's Rules (Third Computer Inquiry)*, 104 F.C.C.2d 958 (1986). The Bell companies began offering unseparated information services when the first CEI plans were approved in 1988.

Proposed Rulemaking, FCC 98-8, ¶ 15 (rel. Jan. 30, 1998), citing 39 F.3d at 929-30. Far from mandating a return to structural separation, the court affirmed all other parts of the Commission's Computer Inquiry III findings, and remanded the case so that the Commission could conduct a new cost/benefit analysis taking into account the lack of "fundamental unbundling." 39 F.3d at 933.

In addition, subsequent to *California III*, Congress enacted the 1996 Act. Under Section 11 of the Act, 47 U.S.C. § 161, the Commission is obligated to eliminate unnecessary regulation, such as CEI plans and ONA regulations, and, under Section 251, the Bell companies (and other incumbent local exchange carriers) are required to provide telecommunications carriers with unbundled network elements. As Bell Atlantic showed in its opening comments (at 11-18), these provisions have satisfied or mooted many of the court's findings.

Second, MCI repeatedly claims that the Bell companies have not shown that there are any benefits from integrated provision of telecommunications and information services and, therefore, cannot pass the cost/benefit test. MCI apparently believes that if it says this enough times, it will come true. *See* MCI at 22-44. In making this allegation, however, MCI ignores the vast record in this docket that shows conclusively that the public welfare suffered to the tune of billions of dollars before the Bell companies were able to offer voice messaging services. *See, e.g.*, Jerry A. Hausman, "Valuing the Effect of Regulation on New Services in Telecommunications," BROOKINGS PAPERS ON ECONOMICS, MICROECONOMICS 1997 (in Bell Atlantic at Att. A). And MCI ignores the robust information services marketplace that has not been harmed in any way by Bell company entry.

As Bell Atlantic showed in its opening comments, the Commerce Department has found the information services industry to be one the fastest-growing sectors of the U.S. economy, and the United States to be the world's largest producer of information services products and services. Bell Atlantic at 4-5. These Government findings hardly support MCI's unsupported claims of competitive harm. In addition, in the decade since the Bell companies were authorized to provide unseparated information services, there has not been one Commission finding of discrimination by one Bell company against any information service provider. With no fire, the opponents are left with continued smokescreens of "potential" harm. These arguments had no validity when first made in 1986, and they remain equally invalid today. The Commission must blow away the smoke and find that structural relief has worked just fine.

Bell Atlantic has shown that the mandates of the 1996 Act to eliminate unnecessary regulation and the unblemished record of the past decade require less, not more, regulation of the Bell companies' information services. Instead of returning to the Medieval days of Computer Inquiry II, when the public received few new information services, the Commission should immediately eliminate CEI plans, which serve only to delay even unopposed services, phase out ONA, and reduce unnecessary and burdensome reporting requirements. *See* Bell Atlantic at 11-18, 20-23. Contrary to MCI's

anticompetitive desires, the public would suffer if the Commission tried to roll back the information services Renaissance.[3]

Faced with no valid justification for eliminating Bell company competition, several parties have tried in vain to find alleged anticompetitive or unlawful Bell company practices. Besides the perennial references to the fully-discredited 1991 Georgia PSC decision,[4] several parties retread issues that are either the subject of separate proceedings before this Commission, or were raised in inflammatory letters that have been fully answered. *See* MCI at 53-56, ALTS at 14-19, Time Warner at 5-6.[5] None of these allegations has any validity. However, in Attachment 1, Bell Atlantic responds

[3] GSA appears to support structural separation because of the "operational synergism of enhanced services and basic voice services" that the Bell companies may realize and their ability to make it easier for customers to subscribe to information and telecommunications services from a single source by engaging in joint marketing over the Internet. GSA at 5-6. These factors, however, reduce prices and increase customer convenience and should be reasons to retain, not eliminate, structural relief.

[4] The Georgia Public Service Commission found that BellSouth had engaged in certain anticompetitive conduct in connection with its voice messaging service. BellSouth demonstrated in detail in the earlier stage of this proceeding that the Georgia findings are completely invalid, and the Commission should give them no weight. *See* BellSouth Comments at 32-50 (filed April 7, 1995).

[5] Metro One, a provider of reverse-search directory services, claims that it should have "batch access" to, i.e., be able to download, Bell Atlantic's directory assistance database. Metro One at 6. However, as Metro One admits, Bell Atlantic provides access to the database that enables Metro One to provide its information services. And, even if Metro One were a carrier, which it is not, Bell Atlantic is only required to provide access to the database, not the ability to download it.

briefly to each specific allegation, with references to the more detailed filings on the subject.[6]

MCI also argues that the Commission should order structural separation because the Bell companies have provided so few information services under CEI. MCI at 23-24. While the Bell companies may have relatively small market shares for some services, they have dozens of approved CEI plans and have offered a wide range of information services, including voice messaging,[7] electronic mail, electronic document interchange, voice and data storage and forward services, fax store and forward, Internet access, and a host of protocol conversion services. The fact that MCI appears to be unaware of most of them is that each Bell company is but one of a large number of well-financed competitors for each information service, and its continued unseparated provision of such services could not possibly harm competition. The commercial success, or lack thereof, of any particular Bell company service is a risk of the

[6] In addition, ATSI argues repeatedly that the Bell companies have engaged in discrimination and other anticompetitive abuses against its members. ATSI at 3-5, 7-8, 33, 36-37. But ATSI fails to specify even one instance of such alleged activity, because, to Bell Atlantic's knowledge, none exists. The Commission cannot put any weight on vague, unspecified, undocumented allegations.

[7] MCI claims that the Bell companies face little competition for their voice messaging services, because of the lack of "reasonably priced, nondiscriminatory network access for ISPs." MCI at 36. Besides the error of its basic premise – no Bell company has more than three percent of the voice messaging market – MCI ignores the fact that the Bell companies' voice messaging services must take the same network access services at the same rates and same terms and conditions as their competitors. Yet the Bell companies have been able to price their voice messaging services at affordable, compensatory rates, and there is no reason that other parties cannot do so as well.

marketplace, and certainly does not justify imposing additional regulatory restrictions.[8] And the requirement that a Bell company disclose well in advance its plans to offer a new information service by filing a CEI plan, then wait many months for approval, has been a significant factor in Bell company decisions not to commit resources to developing new services for which others will grab market share while CEI approval is pending.

Despite the theoretical claims of these parties, a decade of Bell company integrated provision of information services has produced no public detriments whatever. Services have been made available that no party offered before, and the overall information services market has flourished. A return to structural separation would curtail or eliminate new and existing information services and increase prices to the public. The only ones who will benefit are other providers, who will avoid competition. The Commission should reject their anticompetitive demands.

III. Only Carriers Should Have Access to Unbundled Network Elements.

The parties that seek access to unbundled network elements can point to no information service that they could not provide without such access. Instead, they dwell on the need to subscribe to unbundled metallic loops in order to provide digital subscriber loop ("xDSL") services. *See e.g.*, APK Net et al. at 8-9, CIX at 12-14, ITAA

[8] Bell Atlantic demonstrated in its opening comments and will not repeat here the fallacy of the argument of several parties that the Commission should require intraLATA services to be offered through separate subsidiaries because Congress, for less than two more years, requires structural separation of interLATA information services. Bell Atlantic Comments at 9-10.

at 25-26, Helicon Online at 4.[9] These parties ignore the fact that xDSL is a telecommunications service, not an information service. What these parties want is the ability to use unbundled elements to provide a telecommunications service, and they may do so if they are a carrier. As Northpoint Communications notes, however, to the extent that an ISP wants to offer a telecommunications service, it need simply become certified as a carrier, just as Northpoint says it has done. Northpoint at 2. Otherwise, the ISP gains the benefits that Congress, in Section 251, gave only to carriers in order to encourage increased local competition, while avoiding common carrier obligations. *See* Bell Atlantic at 16.

Accordingly, an ISP that wants to use xDSL, or any other telecommunications service, is given two choices. It may meet state requirements to become a local carrier, incurring the obligations of any common carrier to provide telecommunications services to others, and use unbundled network elements, as needed. Or it may obtain telecommunications services from an affiliated or nonaffiliated carrier, as America Online has recently announced it is doing by using xDSL services obtained

[9] ATSI makes the further claim that "teleservices" providers need other types of unbundled elements. ATSI at 18-23. ATSI does not specify what types of elements its members want or what information services they are unable to provide. ATSI only claims that the inability to obtain unspecified elements puts its members at a disadvantage vis-à-vis the Bell companies' voice messaging services. This, of course, cannot be the case, because all telecommunications services that the Bell companies use are equally available to ATSI's members.

from GTE.[10] None of the parties show why one or the other of those choices is inadequate to meet its needs.[11]

IV. The "All Carrier Rule" Should Continue To Apply To Carriers Not Subject to Section 251(c)(5).

AT&T asks the Commission to eliminate the "All Carrier Rule" that requires every common carrier to provide reasonable advance notice of network changes. AT&T at 19-22. Without the All Carrier Rule, carriers that are not subject to Section 251(c)(5), because they are not incumbent local exchange carriers, would not need to disclose their network interfaces. Those carriers, however, are still subject to Section 251(a)(1), which imposes a general obligation on all telecommunications carriers to interconnect with the facilities and equipment of all other carriers. 47 U.S.C. § 251(a)(1). Unless non-incumbent exchange carriers disclose their interfaces, as they would have to under the All Carrier Rule, other carriers would not have the basic interface information that they need to interconnect with them. Therefore, the Commission should retain the All Carrier Rule as one way of ensuring that all carriers can fulfill the interconnection requirements of Section 251(a)(1).

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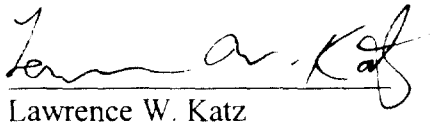
[10] America Online to Launch Field Trials for High-Speed Access to AOL Service, AOL News Release, April 2, 1998.

[11] A third choice, that may meet some ISPs' data service needs, is to subscribe to unconditioned private line services that Bell Atlantic and other exchange carriers offer.

Conclusion

Accordingly, the Commission should reject the arguments of the parties discussed above.

Respectfully Submitted,



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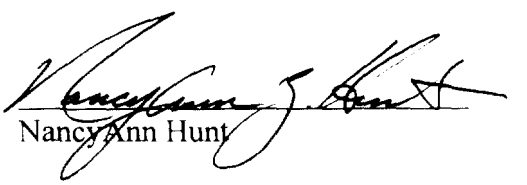
April 23, 1998

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of April, 1998 a copy of the foregoing "Reply Comments of Bell Atlantic on Further Notice" was served on the parties on the attached list.



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ATTACHMENT 1

The following responds briefly to the allegations made by the parties of anticompetitive and other unlawful practices of Bell Atlantic. Where applicable, references are included to filings in pending Commission proceedings that address the issues.

ALTS

1. Bell Atlantic's Internet Access Service. The issues ALTS raises here are before the Commission in connection with Bell Atlantic's CEI plan for Internet Access Service. First, ALTS claims that Bell Atlantic is bundling intraLATA Internet access with an interLATA link and, therefore, is offering an interLATA information service without structural separation. ALTS at 15. ALTS is wrong. At the request of the customer's preselected interexchange provider, Bell Atlantic provides its end users with a combined bill covering both its charges and those of the interexchange provider and distributes the applicable revenues to the interexchange provider. As ALTS is well aware, a Bell company that bills on behalf of an interexchange provider is not itself engaged in provision of an interexchange service.*

* ALTS even makes the preposterous claim that the mere advertising of a combined rate constitutes "bundling." ALTS at n.14. Bell Atlantic advertises a single rate simply to compete with other Internet service providers, such as ALTS member WorldCom, which promotes a single access rate. Nor is Bell Atlantic reselling interexchange service, as ALTS claims (*id.*). Instead, Bell Atlantic is simply billing on behalf of the interexchange provider, to avoid the inconvenience to the end user of receiving two bills.

Second, ALTS contends that Bell Atlantic fails to provide end users with a full choice of ISPs. *Id.* This is also wrong. Bell Atlantic gives its end users a full choice of all interexchange providers that have chosen to install the technology needed to interconnect with Bell Atlantic's Internet access service. Most interexchange providers have not chosen to install the needed packet-switched technology, because the Commission's "ESP exemption" makes inefficient circuit-switched services artificially less expensive for Internet providers and gives them no incentive to modernize. Finally, contrary to ALTS' claim that the underlying telecommunications service is available only to end users, *id.*, Bell Atlantic makes its Internet Protocol Routing Service, which is the basic service that its enhanced Internet service provider has chosen to use, available under tariff in a nondiscriminatory manner to end users and competitors alike.

Bell Atlantic has addressed all of these issues at greater length in its filings in CC Pol. 96-09, its CEI plan for Internet Access Service. *See* Bell Atlantic's Opposition to Petition for Reconsideration (filed Aug. 9, 1996), Reply of Bell Atlantic (filed Aug. 26, 1996), Reply of Bell Atlantic (filed July 1, 1997).

2. Reciprocal Compensation. Repeating the charges in its June 20, 1997 letter to the Commission, ALTS also claims that the Bell companies are somehow violating their CEI plans by failing to pay reciprocal compensation for interstate access services they provide to Internet providers. ALTS at 16-19. As Bell Atlantic showed in its opposition to the letter, the predominantly interstate services in question are exclusively interexchange services (for which Bell Atlantic provides the exchange access component), to which reciprocal compensation does not apply. *See* Comments

of Bell Atlantic and NYNEX (filed July 17, 1997) and Reply Comments of Bell Atlantic and NYNEX (filed July 31, 1997) in File No. CCB/CPD 97-30.

MCI

1. October 22, 1997 Letter. MCI cites and attaches to its filing a copy of a letter to the Commission containing a laundry list of trumped-up allegations against Bell Atlantic. MCI at 54-55 and App. B. Bell Atlantic fully responded to each of those charges in a letter dated November 6, 1997, where it showed that none has any validity. A copy of Bell Atlantic's letter is attached.
2. Reverse-Search Directory. MCI claims that Bell Atlantic is offering a reverse-search directory service without a CEI plan and without giving MCI access to the directory assistance database. MCI at 53-54. MCI has filed a separate complaint on this issue, and Bell Atlantic will answer all of MCI's false charges in that proceeding. MCI v. Bell Atlantic Corp., File No. E-98-34 (filed Mar. 17, 1998). Briefly, however, this is an intrastate, intraLATA service. It is designed so that it is not accessable from outside the state or the LATA in which the database is located. Therefore, the Commission's Computer Inquiry III requirements do not apply, nor is it an interLATA information service that requires structural separation. The service has been approved by each applicable state commission. In addition, Bell Atlantic does give MCI access to the directory assistance database in each jurisdiction in which the service is offered.

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Dee May
Director, Federal Regulatory Affairs

Ex Parte

November 7, 1997

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW
Room 222
Washington, DC 20554

RE: *In the Matter of Commission Actions Critical to the Promotion of Efficient Local Exchange Competition, CCP Pol,. No. 97-9*

Dear Mr. Caton,

Please find attached a letter sent to Chairman Kennard today. The letter should be filed as an ex parte in the above-captioned proceeding.

Please feel free to contact me at 202-336-7824 if you have any questions.

Sincerely,

Dee May

Attachment

cc:

B. Esbin
D. Kanuch
L. Kinney
R. Metzger
J. Muleta
J. Poltronieri
L. Strickling
R. Welch

Bell Atlantic
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November 6, 1997

The Honorable William E. Kennard
Chairman
Federal Communications Commission
1919 M Street, N.W.
Room 814
Washington, D.C. 20554

Dear Chairman Kennard:

MCI has once again written to the Commission drumming up new excuses for its supposed inability to enter the local telecommunications market and rehashing old ones.[1] In contrast to MCI's unsupportable claims that Bell Atlantic has prevented MCI from entering the local market, serious competitors already have done so – purchasing over 157,000 lines for resale and over 31,000 unbundled loops. In addition, competing carriers in the Bell Atlantic region are providing local service using about 350,000 of their own lines.

In fact, while MCI is crying to the Commission about its inability to enter local markets, it is singing to its investors about its local market successes. In its most recent earnings report, MCI claims that it increased its local market revenue year-to-date to $237 million and that its local minutes increased 20 percent each month since January.[2] MCI also claims that it is now offering "local services to businesses in 25 major U.S. markets" including "such large business customers as Charles Schwab, Nordstrom, Allied Van Lines, Esprit and most recently, Tommy Hilfiger."[3] MCI has at least three local switches in New York alone, and is reselling Bell Atlantic service in New York and other states.

Bell Atlantic takes seriously the commitments it made as part of its merger with NYNEX. Bell Atlantic is living up to the letter and spirit of every one of those commitments. MCI, however, is not satisfied with those commitments and wants to rewrite them to give MCI a competitive advantage or to make them impossible to meet. MCI's transparent objective is to continue to hide its own selective entry into the local market from the FCC, so that it can continue to claim that the market is closed – and thereby delay the advent of RBOC competition in MCI's home market, long distance. This is regulatory gamesmanship at its worst.

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[1] Letter from Jonathan Sallet, MCI Chief Policy Counsel, to the Honorable Reed Hundt, then Chairman of the Federal Communications Commission, dated October 22, 1997 ("MCI letter").

[2] See MCI Reports Third Quarter Revenue of $4.8 Billion (October 23, 1997).

[3] Id.

It is time to put aside the rhetoric and get on with competition in all telecommunications markets. If MCI is serious about entering local markets (and not just for the large businesses it trumpets to its investors), it should do so with broad-based offerings now. It should not delay its entry in the hopes of protecting its long distance business from true competition.

1. Bell Atlantic Has Negotiated Interconnection Agreements In Good Faith

Bell Atlantic has negotiated and signed more than 340 interconnection agreements. The first of those agreements was completed on May 31, 1996, 12 months before MCI signed its first agreement with Bell Atlantic. Bell Atlantic has not treated MCI any differently from any of the other carriers with whom it has successfully reached agreement. If anything, Bell Atlantic has been forced to devote more time and resources to negotiating with MCI than it has with any other CLEC because MCI has made more demands, and more extreme demands, than any other carrier.

While MCI grudgingly acknowledges that "some progress" has been made in obtaining interconnection agreements, the fact is that Bell Atlantic and MCI either now have, or soon will have, signed interconnection agreements for the largest Bell Atlantic states, including New York, New Jersey, Pennsylvania, and Virginia. In Massachusetts, a final interconnection agreement is awaiting the outcome of a state arbitration.[4] In Maryland, Bell Atlantic and MCI are incorporating the state commission's October 9th arbitration decision into the parties' final interconnection agreement.

Nonetheless, MCI's complaint about the time it took to reach a contract in New York can best be understood by looking at the facts. MCI submitted a "request" for negotiation in March of last year, but for months thereafter MCI simply provided copies of "national demands" and refused to review Bell Atlantic's proposed contract or to negotiate specific New York terms of interconnection. In August of 1996, MCI filed for arbitration and mediation, without ever having engaged in New York negotiations.

MCI's refusal to negotiate meant that literally hundreds of issues had to be decided by the New York Public Service Commission. Not surprisingly, MCI's litigation-first approach took much longer to complete than the largely negotiated approach Bell Atlantic has experienced with most other major CLECs. Indeed, MCI was the last of the three major long distance carriers to complete their interconnection agreement with Bell Atlantic-New York and long after other local entrants such as MFS, TCG and RCN.

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[4] After several rounds of state arbitrations, Bell Atlantic offered to lock our respective negotiating teams in a room until they resolved outstanding issues and to escalate to Bell Atlantic and MCI executives any issues they couldn't resolve. MCI rejected this offer.

2. Bell Atlantic Has Consistently Proposed Appropriate Rates For Resale, Unbundled Network Elements and Interconnection

Bell Atlantic has consistently proposed prices for resold services, network elements and interconnection consistent with its Merger obligations and the Act's pricing standards. MCI, on the other hand, is dissatisfied with the state commission determinations based on these same cost standards.

For example, MCI complains that the 19.1 percent wholesale discount in New York would cause MCI to lose $6.05 each month. By MCI's own calculations, MCI would need a wholesale discount of at least 55 percent just to break even.[5] If MCI's local cost structure is that highly inflated, it is hardly surprising that MCI is reluctant to enter local markets. But the Act does not require state commissions to set wholesale rates at levels that guarantee MCI will earn a profit or break even. Rather, the Act requires state commissions to set wholesale rates "on the basis of the retail rates charged to subscribers for the telecommunications service requested, excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier."[6] The fact that more than 25 other carriers are competing with Bell Atlantic-New York on a resale basis -- and have already purchased over 109,000 lines for resale (11,000 during the first three weeks of October) in New York alone -- proves that Bell Atlantic's wholesale rates are low enough to facilitate local entry.

MCI also makes the unsupported assertion that Bell Atlantic's interconnection and unbundled element rates "include historical or embedded costs."[7] The fact is that Bell Atlantic has provided a forward-looking, economic cost study to support every interconnection and unbundled network element rate it has proposed. While MCI is entitled to challenge Bell Atlantic's cost studies in any state commission proceedings -- and it has -- it is the state commission that must determine Bell Atlantic's rates for interconnection and unbundled network elements under the Telecommunications Act. State commissions have recognized that Bell Atlantic's cost studies are based on forward-looking, economic cost; have set permanent prices on that basis; and have set interim prices based on the FCC's proxies.

Moreover, in criticizing state commission rate determinations, MCI is talking out of both sides of its mouth. For example, MCI complains that the Pennsylvania state commission set recurring rates for local switching at levels above those set by other states, but praises that same

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[5] To cover MCI's loss of $6.05, the New York wholesale rate would have to be reduced from its current level of $13.37 to $7.32. Such a wholesale rate would amount to a 55 percent discount from the current $16.65 retail rate.

[6] 47 U.S.C. § 252(d)(3).

[7] MCI Letter at 9.

state commission for setting non-recurring rates for switching local service at $6.41. It then criticizes other state commissions for setting non-recurring rates too high by including "costs that should appropriately be charged as recurring costs,"[8] implying that those commissions set the recurring rates for network elements -- such as local switching -- too low. MCI cannot have it both ways.[9]

In any event, if MCI is dissatisfied with the rates determined by any state commission, it has a remedy under the Act. It can file an action in federal district court challenging the state commission determination. In fact, MCI and its fellow long distance carriers have already challenged state commissions in court at least 50 times in local competition proceedings.

3. Bell Atlantic Has Consistently Proposed Appropriate Non-Recurring Charges

Bell Atlantic also has consistently proposed that state commissions set non-recurring charges in accordance with the Merger Order and the Act's pricing standards. Again, MCI is dissatisfied with both the Act's pricing standards and the state commission determinations under the Act.

While MCI does nothing more than assert that Bell Atlantic's non-recurring charges "are not cost based," the fact is that every non-recurring rate proposed by Bell Atlantic is supported by a forward-looking, economic cost study. And each state commission is setting Bell Atlantic's non-recurring rates in formal proceedings on a forward-looking basis, using cost information submitted by Bell Atlantic, MCI and other telecommunications carriers.

MCI also attacks Bell Atlantic's non-recurring rates by making an inappropriate "apples to oranges" comparison. MCI argues that the non-recurring rate Bell Atlantic proposed in New York for an unbundled loop is too high because it exceeds Bell Atlantic's retail charge to sign up a new residential customer. But the Act does not require state commissions to set network element rates in relation to Bell Atlantic's retail rates. The Act says instead that network element rates are to be set "based on the cost . . . of providing the . . . network element . . . and may include a reasonable profit."[10] While the retail rate is not relevant in determining the non-recurring charge for an unbundled loop, it is nevertheless instructive to note that the cost of providing an unbundled loop to MCI and coordinating the cutover of that loop to MCI's switch is greater than the cost of establishing Bell Atlantic's retail service to a new residential customer. It should also be noted that Bell Atlantic's non-recurring charges for loops in New York have not deterred competitors from purchasing more than 19,000 loops.

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[8] MCI Letter at 10.

[9] MCI also provides an incomplete description of the Pennsylvania local switching rate by only presenting the originating rate and ignoring the terminating rate, which is about half the originating rate.

[10] 47 U.S.C. § 252(d)(1).

Moreover, MCI ignores the fact that the nonrecurring charge to resell service to a new customer in New York -- which is the charge that compares to Bell Atlantic's retail non-recurring charge of $55 to sign up a new customer -- is only $44.50. It also ignores the fact that the non-recurring charge to MCI when it resells service to an existing Bell Atlantic residential customer in New York is only $8.09, and it is this rate that best reflects the charge for switching from Bell Atlantic to MCI. Bell Atlantic has also gone beyond what the Act requires and agreed to allow competitors to pay these non-recurring charges over time in lower monthly increments to reduce the up-front cost of switching local customers.

4. Performance Measures and Performance Standards

In its September 17, 1997 letter to Bell Atlantic, MCI acknowledges that we will provide the performance reports specifically required by the Merger Order, but then demands that Bell Atlantic provide a completely different list of specific performance reports which MCI claims "are necessary to ensure that the mandates of the 1996 Act are met." In fact, Bell Atlantic is already providing MCI with performance reports under the interconnection agreements negotiated prior to the merger. The performance reports now demanded by MCI, however, have never been developed or used by Bell Atlantic to provide service and would result in thousands of pages being sent to MCI each month. Many of MCI's proposed performance reports have already been rejected by state commissions. Such hyper-detailed reports are neither required by the Merger Order nor necessary for local entry.

MCI also demands that Bell Atlantic agree to restore service within four hours (where a service technician dispatch is required) at least 90 percent of the time and to pay MCI $20,000 each time Bell Atlantic does not meet this performance standard. MCI's demand is far more stringent than what state regulators require for Bell Atlantic's retail services and goes well beyond the Act's requirements. And the proposed penalty is so completely out of line for a service MCI may purchase at about $15 per month that one is forced to wonder whether it is a typographical error. Unfortunately, it is not – but it is an apt illustration of the outlandish and extreme demands that MCI regularly uses to bog down a negotiation process that works well for other carriers.

5. Bell Atlantic Is Providing Nondiscriminatory Access To Its Operating Support Systems

MCI continues to gripe about the access Bell Atlantic provides to its Operating Support Systems ("OSS"). The fact is that competing local carriers are using Bell Atlantic's OSSs and have ordered over 157,000 resale lines and more than 31,000 unbundled loops. In the first few weeks of October alone we processed orders for 11,000 resale lines in New York and we have the capacity to process many times that volume. Recent tests proved we can handle 4,000 orders on an average day, and peak volumes of 7,500 orders.

MCI's allegations about system outages of up to 18 hours during stress testing of Bell Atlantic's system for even greater levels of demand are simply wrong. While there were some limited intermittent system outages during the stress testing, MCI was still able to submit electronic orders to Bell Atlantic and those orders were processed in a timely fashion once the systems were back on line. The only impact on MCI's orders was a delay of several hours in the response time for order acknowledgments and confirmations – not for the provision of service itself – and even that was limited to the period of the test.

MCI's concerns about Bell Atlantic's Graphical User Interface ("GUI") are also misplaced. While Bell Atlantic does not know the source of MCI's data, Bell Atlantic has tested the GUI itself. In each case, Bell Atlantic's personnel were able to verify a service address, obtain a telephone number and service delivery date in less than three minutes, which is the average time MCI claims it takes a Bell Atlantic service representative to perform the same transaction.

There is also no basis for MCI's concerns about manual handling of orders. Bell Atlantic still completes these orders on time and there is no evidence of a higher error rate on these orders. Bell Atlantic handles these orders in special centers that are staffed with employees trained to handle these types of orders. MCI is also wrong when it states that it is forced to receive order confirmations by fax. Bell Atlantic returns Firm Order Confirmations to carriers electronically when the order is submitted electronically. When the carrier submits the order by fax, Bell Atlantic returns the Firm Order Confirmation by fax.

MCI also claims that Bell Atlantic failed to comply with an FCC order that it says "required every Bell, including Bell Atlantic, to put in place by January 1, 1997 fully automated OSS, capable of handling commercial volumes of transactions." In the first place, MCI's characterization of the FCC's order is simply wrong. The Commission's order required incumbent LECs, by January 1, 1997, "to establish and make known to requesting carriers the interface design specifications that the incumbent LEC will use to provide access to OSS functions."[11] They do ***not*** "require the actual provision of access to OSS functions by January 1, 1997."[12]

More fundamentally, the claim is irrelevant. We do provide electronic access, have been handling orders throughout the year, and as our tests proved, can handle many times the number of orders we're actually getting.

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[11] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Docket No. 96-98, *Second Order on Reconsideration*, 11 FCC Rcd 19738 (1996), at ¶ 8.

[12] U S West's Petition for Waiver of Operations Support Systems Implementation Requirements, CCBPol 96-25, *Memorandum Opinion and Order* (rel. October 23, 1997) at ¶ 10.

MCI's complaints that Bell Atlantic has not provided it with specifications for Electronic Data Interchange (EDI) and LSOG version 2 are without merit. MCI is well aware of the specifications because MCI is a member of the industry standards body that adopted them. Moreover, Bell Atlantic has met with MCI on numerous occasions to discuss the submission of orders to Bell Atlantic using these specifications.

In reality, the problem here is that MCI has argued that Bell Atlantic should employ the latest industry standards in its ordering interfaces, but MCI itself isn't ready to do so. As a result, Bell Atlantic is not requiring carriers to make a flash cut to LSOG version 2. We will continue to accept version 1 orders for an interim period and perform the conversion to version 2 ourselves. Ultimately, however, MCI must get its own act together. After a reasonable transition period, MCI must be prepared to use the interfaces that it has argued Bell Atlantic should be required to deploy.

6. Bell Atlantic Is Providing Collocation In Full Compliance With The Telecommunications Act

MCI alleges that Bell Atlantic is intentionally making collocation difficult and expensive for new entrants. Again, the facts don't support its claim.

In reality, Bell Atlantic has installed over 200 collocation sites in the former NYNEX region alone, and over 370 throughout Bell Atlantic. The demand for physical collocation has increased dramatically with Bell Atlantic building 109 collocation sites so far this year in the former NYNEX region (more than twice the number completed in 1996). The simple fact is that all pending collocation requests in New York are on track to be completed within the interval prescribed by the New York commission and there is no backlog.

During the week of September 15, 1997, MCI submitted a number of applications for collocation, many of which contained incorrect provisioning information or failed to answer critical technical questions. After several conference calls and several unsuccessful attempts to revise its applications, MCI was finally able to submit corrected collocation applications to Bell Atlantic on October 3rd.

MCI's complaints about the cost or availability of space for physical collocation are equally unfounded. The cost estimates that MCI complains about are simply estimates of the amount that Bell Atlantic will actually spend to establish a physical collocation site on MCI's behalf in the particular offices it has chosen. If it wants to spend less, or if space is not available in a particular office, it has the option of choosing virtual collocation, which is now available in New York as well as the rest of the Bell Atlantic region.

Finally, for collocation to work successfully, the collocator and Bell Atlantic must work cooperatively. Yet, MCI has a history of failing to provide forecasts, refusing to prioritize offices, and submitting inaccurate and incomplete applications. MCI's most recent collocation

applications are no exception. While Bell Atlantic has made repeated efforts to schedule MCI's collocation requests, MCI has not provided a standard drawing of the collocation equipment, the installation date of the equipment or the dates when Bell Atlantic personnel could be trained on the equipment. We want to work with MCI and our other carrier customers to fill their orders as efficiently as possible, but we can't do it alone. At the end of the day it must be a two-way street.

7. Bell Atlantic is Facilitating – Not Forestalling – Competition Under The Telecommunications Act

MCI rehashes the positions it previously took in a variety of FCC or state proceedings that are either pending or complete. While Bell Atlantic has participated in legal proceedings related to the Telecommunications Act, it has done so to ensure a level playing field for local competition. Such actions cannot legitimately be characterized as anticompetitive.

First, Bell Atlantic is going beyond its obligations under the Telecommunications Act to obtain intellectual property licenses necessary to provide services to CLECs. Of course, where Bell Atlantic incurs additional fees to obtain such licenses, Bell Atlantic should recover those costs through the rates for network elements and wholesale services set by state commissions.

Second, Bell Atlantic is fulfilling its obligations to provide number portability, and recently became the first company in the country to turn up permanent number portability in Maryland. MCI just wants to avoid paying its fair share of the costs of implementing number portability. If Congress intended to give competing local carriers a free ride on the number portability train, it would not have required that "[t]he cost of establishing . . . number portability shall be borne by all telecommunications carriers on a competitively neutral basis . . . ."[13]

Third, MCI claims that the Commission has never found billing and collection services to be competitive for non-subscribed services and that it must therefore regulate these billing and collection services. MCI is flatly wrong. Non-subscribed services include 900 services. In *Audio Communications*, the Commission found that competition for billing services for non-subscribed 900 services "are open to even greater potential competition than the LEC billing and collection services, which the Commission found to be competitive in its Detariffing Order."[14] There is no reason for the Commission to treat billing for any other non-subscribed services differently.

Fourth, Bell Atlantic has fully complied with the Act and the Commission's rules by providing nondiscriminatory access for directory assistance, and MCI and its customers can use

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[13] 47 U.S.C. § 251(e).

[14] In the Matter of Audio Communications, Inc. Petition for a Declaratory Ruling that the 900 Service Guidelines of US Sprint Communications Co. Violate Sections 201(a) and 202(a) of the Communications Act, 8 FCC Rcd 8697, 8699 (1993).